

Michigan Department of Health and Human Services (MDHHS or Department)
MEMORANDUM
Lansing, MI

Date: September 29, 2022

TO: Donald Haney, Chairperson, CON NH-HLTCU Informal Workgroup

FROM: Kenneth Wirth, Policy Analyst, MDHHS

RE: Draft Language for Certificate of Need (CON) Nursing Home and Hospital Long-Term-Care Unit (NH-HLTCU) Informal Workgroup

The CON NH-HLTCU Informal Workgroup requested at its September 8, 2022 meeting that the Department provide draft language for their consideration on multiple charges assigned to the workgroup by the CON Commission.

Charge #1: Review definitions for clarity and consistency [Section 2].

Section 2(1)(w) currently reads:

(z) "Planning year" means 1990 or the year in the future, at least three (3) years but no more than seven (7) years, for which nursing home beds needs are developed. The planning year shall be a year for which official population projections, from the Department of Management and Budget or U.S. Census, data are available.

Section 2(1)(w) as amended will read:

(z) "Planning year" means a year in future, at least three (3) years but no more than seven (7) years, for which nursing home beds needs are developed. The planning year shall be a year for which official population projects from the Department of Technology, Management and Budget, or its designee, are available.

Charge #2: Review adding requirement that a previously approved change of ownership (CHOW) CON must be 100% complete before replacement [Section 7] and/or relocation [Section 8] application(s) can be approved.

New Section 7(4):

(4) An applicant proposing to replace beds must demonstrate that any previously approved change of ownership (CHOW) certificate of need for the facility has been deemed a Completed Project by the Department, before the replacement application can be approved.

New Sections 8(3) and 8(1)(g):

(3) An applicant proposing to relocate existing nursing home/HLTCU beds, under Section 8(1), or add existing nursing home/HLTCU beds, under Section 8(2), must demonstrate that any previously approved change of ownership (CHOW) certificate of need for the facility has been deemed a Completed Project by the Department, before the relocation application can be approved.

Section 8(1)(g) - An applicant proposing to relocate beds, under Section 8(1), must demonstrate that any previously approved certificate of need for addition of existing nursing home/HLTCU beds at the facility, under Section 8(2), has been deemed a Completed Project by the Department, before the relocation application can be approved.

Charge #4: Review multiple sections for their ability to be broken into subsections [Section 6(1), etc.].

Section 2(1)(l) currently reads:

(l) "Department inventory of beds" means the current list, for each planning area maintained on a continuing basis by the Department: (i) licensed nursing home beds and (ii) nursing home beds approved by a valid CON issued under Part 222 of the Code which are not yet licensed. It does not include (a) nursing home beds approved from the statewide pool and (b) short-term nursing care program beds approved pursuant to Section 22210 of the Code, being Section 333.22210 of the Michigan Compiled Laws.

Section 2(1)(l) as amended will read:

(l) "Department inventory of beds" means the current list, for each planning area maintained on a continuing basis by the Department:
(i) licensed nursing home beds, and
(ii) nursing home beds approved by a valid CON issued under Part 222 of the Code which are not yet licensed. It does not include:
(A) nursing home beds approved from the statewide pool, and
(B) short-term nursing care program beds approved pursuant to Section 22210 of the Code, being Section 333.22210 of the Michigan Compiled Laws.

Section 2(1)(m) currently reads:

(m) "Existing nursing home beds" means, for a specific planning area, the total of all nursing home beds located within the planning area including: (i) licensed nursing home beds, (ii) nursing home beds approved by a valid CON issued under Part 222 of the Code which are not yet licensed, (iii) proposed nursing home beds under appeal from a final Department decision made under Part 222 or pending a hearing from a proposed decision issued under Part 222 of the Code, and (iv) proposed nursing home beds that are part of a completed application under Part 222 of the Code which is pending final Department decision. (a) Nursing home beds approved from the statewide pool are excluded; and (b) short-term nursing care program beds approved pursuant to Section 22210 of the Code, being Section 333.22210 of the Michigan Compiled Laws, are excluded.

Section 2(1)(m) as amended will read:

- (m) "Existing nursing home beds" means, for a specific planning area, the total of all nursing home beds located within the planning area including:
 - (i) licensed nursing home beds
 - (ii) nursing home beds approved by a valid CON issued under Part 222 of the Code which are not yet licensed
 - (iii) proposed nursing home beds under appeal from a final Department decision made under Part 222 or pending a hearing from a proposed decision issued under Part 222 of the Code, and
 - (iv) proposed nursing home beds that are part of a completed application under Part 222 of the Code which is pending final Department decision.
- (A) Nursing home beds approved from the statewide pool are excluded; and
- (B) short-term nursing care program beds approved pursuant to Section 22210 of the Code, being Section 333.22210 of the Michigan Compiled Laws, are excluded.

Section 6(1)(a)(vi) currently reads:

- (vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

Section 6(1)(a)(vi) as amended will read:

- (vi) Delinquent debt obligation to the State of Michigan including, but not limited to:
 - (A) Quality Assurance Assessment Program (QAAP)
 - (B) Preadmission Screening and Annual Resident Review (PASARR)
 - (C) Civil Monetary Penalties (CMP)

Section 6(2)(a)(vi) currently reads:

- (vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

Section 6(2)(a)(vi) as amended will read:

- (vi) Delinquent debt obligation to the State of Michigan including, but not limited to:
 - (A) Quality Assurance Assessment Program (QAAP)
 - (B) Preadmission Screening and Annual Resident Review (PASARR)
 - (C) Civil Monetary Penalties (CMP)

Section 7(1)(a)(vi) currently reads:

- (vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

Section 7(1)(a)(vi) as amended will read:

- (vi) Delinquent debt obligation to the State of Michigan including, but not limited to:
 - (A) Quality Assurance Assessment Program (QAAP)
 - (B) Preadmission Screening and Annual Resident Review (PASARR)
 - (C) Civil Monetary Penalties (CMP)

Section 7(2)(a)(vi) currently reads:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

Section 7(2)(a)(vi) as amended will read:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to:
(A) Quality Assurance Assessment Program (QAAP)
(B) Preadmission Screening and Annual Resident Review (PASARR)
(C) Civil Monetary Penalties (CMP)

Section 8(2)(a)(vi) currently reads:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

Section 8(2)(a)(vi) as amended will read:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to:
(A) Quality Assurance Assessment Program (QAAP)
(B) Preadmission Screening and Annual Resident Review (PASARR)
(C) Civil Monetary Penalties (CMP)

Section 9(1)(a)(vi) currently reads:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

Section 9(1)(a)(vi) as amended will read:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to:
(A) Quality Assurance Assessment Program (QAAP)
(B) Preadmission Screening and Annual Resident Review (PASARR)
(C) Civil Monetary Penalties (CMP)

Section 9(2)(a)(vi) currently reads:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

Section 9(2)(a)(vi) as amended will read:

(vi) Delinquent debt obligation to the State of Michigan including, but not limited to:
(A) Quality Assurance Assessment Program (QAAP)
(B) Preadmission Screening and Annual Resident Review (PASARR)
(C) Civil Monetary Penalties (CMP)

Section 10(3)(e) currently reads:

(e) has any delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Civil Monetary Penalties (CMP), Medicaid level of care determination (LOCD), or preadmission screening and annual resident review (PASARR).

Section 10(3)(e) as amended will read:

- (e) has any delinquent debt obligation to the State of Michigan including, but not limited to:
 - (i) Quality Assurance Assessment Program (QAAP)
 - (ii) Civil Monetary Penalties (CMP)
 - (iii) Medicaid Level of Care Determination (LOCD)
 - (iv) Preadmission Screening and Annual Resident Review (PASSAR)

Charge #5: Review adding language regarding QAAP, PASSAR, and CMP to requirements for renewal of lease applications [Section 9(3)].

Section 9(3) currently reads:

- (3) An applicant proposing to renew the lease for an existing nursing home/HLTCU shall not be required to be in compliance with the needed nursing home bed supply for the planning area in which the nursing home/HLTCU is located, if all of the following requirements are met:
 - (a) The lease renewal will not result in a change in bed capacity.
 - (b) The licensed site does not change as a result of the lease renewal.
 - (c) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.

Section 9(3) as amended will read:

- (3) An applicant proposing to renew the lease for an existing nursing home/HLTCU shall not be required to be in compliance with the needed nursing home bed supply for the planning area in which the nursing home/HLTCU is located, if all of the following requirements are met:
 - (a) The lease renewal will not result in a change in bed capacity.
 - (b) The licensed site does not change as a result of the lease renewal.
 - (c) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.
 - (d) All delinquent debt obligations to the State of Michigan have been paid including, but not limited to:
 - (i) Quality Assurance Assessment Program (QAAP)
 - (ii) Preadmission Screening and Annual Resident Review (PASARR)
 - (iii) Civil Monetary Penalties (CMP)

Charge #7: Consider adding language to Section 11(2) to ensure beds are operated in an appropriate manner for the population to be served like Psychiatric Beds and Services.

Current language existing within CON Psychiatric Beds and Services Review Standards can be found within the Project Delivery Requirements [Section 13(2)(a)]:

The proposed licensed psychiatric beds shall be operated in a manner that is appropriate for a population with the ethnic, socioeconomic, and demographic characteristics including the developmental stage of the population to be served.

This language has remained unchanged within CON Psychiatric Beds and Services Review Standards since 1988. The Department recommends that the NH-HLTCU Informal Workgroup review and update currently existing language utilizing existing programs aimed at delivering appropriate services (e.g., National Standards for Culturally and Linguistically Appropriate Services by the Office of Minority Health) for inclusion in the CON Nursing Home and Hospital Long-Term-Care Unit Beds/Services Review Standards.

Charge #10: Consider any other technical changes from the Department, e.g., updates or modifications consistent with other CON review standards and the Michigan Public Health Code.

Section 10(13) currently reads:

(13) A qualifying project will be awarded three (3) points if the proposed project includes bariatric rooms as follows: project using 0 – 49 beds will result in at least one (1) bariatric room or project using 50 or more beds will result in at least two (2) bariatric rooms. Bariatric room means the creation of patient room(s) included as part of the CON project, and identified on the architectural schematics, that are designed to accommodate the needs of bariatric patients weighing over 350 pounds. The bariatric patient rooms shall have a larger entrance width for the room and bathroom to accommodate over-sized equipment, and shall include a minimum of a bariatric bed, bariatric toilet, bariatric wheelchair, and a device to assist resident movement (such as a portable or build in lift). If an in-room shower is not included in the bariatric patient room, the main/central shower room that is located on the same floor as the bariatric patient room(s) shall include at least one (1) shower stall that has an opening width and depth that is larger than minimum MI code requirements.

Section 10(13) as amended will read:

(13) A qualifying project will be awarded three (3) points if the proposed project includes bariatric rooms as follows: project using 0 – 49 beds will ~~result in~~ INCLUDE at least one (1) bariatric room or project using 50 or more beds will ~~result in~~ INCLUDE at least two (2) bariatric rooms. Bariatric room means the creation of patient room(s) included as part of the CON project, and identified on the architectural schematics, that are designed to accommodate the needs of bariatric patients weighing over 350 pounds. The bariatric patient rooms shall have a larger entrance width for the room and bathroom to accommodate over-sized equipment, and shall include a minimum of a bariatric bed, bariatric toilet, bariatric wheelchair, and a device to assist resident movement (such as a portable or build in lift). If an in-room shower is not included in the bariatric patient room, the main/central shower room that is located on the same floor as the bariatric patient room(s) shall include at least one (1) shower stall that has an opening width and depth that is larger than minimum MI code requirements.